

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

FILED
06/30/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41U-0141-R-2023
Stern, Anika
6.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
DEARBORN RIVER BASIN (41U)
PRELIMINARY DECREE

* * * * *

CLAIMANT: State of Montana (Trust Land Management Division)
OBJECTOR: State of Montana (Trust Land Management Division)
NOTICE OF INTENT TO APPEAR: Dearborn Ranch LLC

CASE 41U-0141-R-2023
41U 13594-00
41U 21889-00
41U 34936-00
41U 215249-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. The State of Montana (Trust Land Management Division) (TLMD) is the record owner of claims 41U 13594-00, 41U 21889-00, 41U 34936-00, and 41U 215249-00.

2. Claims 41U 13594-00, 41U 21889-00, 41U 34936-00, and 41U 215249-00 were decreed with the following substantive DNRC issue remarks:

41U 13594-00:

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE NWSESE SEC 38 TWP 17N RGE 4W LEWIS AND CLARK COUNTY.

41U 21889-00:

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE SESWNW SEC 26TWP 19N RGE 6W LEWIS AND CLARK COUNTY.

41U 34936-00:

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE SWSWNE SEC 18 TWP 17N RGE 4W LEWIS AND CLARK COUNTY.

41U 215249-00:

THIS CLAIM WAS NOT INCLUDED IN THE BASIN 41U TEMPORARY PRELIMINARY DECREE ISSUED 05/10/84.

CLAIM FILED LATE 08/26/1996 . IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85-2-221 MCA.

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT WERE FILED BY DIFFERENT PARTIES WHO CLAIM OVERLAPPING PLACES OF USE. 41U 127880-00, 41U 27881-00, 41U 215249-00.

THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A USE AND A RESERVED RIGHT.

NO PRIORITY DATE WAS CLAIMED.

3. In an effort to address the issue remarks, TLMD objected to claims 41U 13594-00, 41U 21889-00, 41U 34936-00, and 41U 215249-00.

4. Dearborn Ranch, LLC (Dearborn) filed a Notice of Intent to Appear for claim 41U 215249-00.

5. TLMD attached Motions to Amend to each of its Objections; the Motions were supported with photographs and/or maps and other supplemental documents. The Motions to Amend propose the following changes to the claims in this Case:

41U 13594-00:

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWSESE	NESESE	36	17N	4W	LEWIS AND CLARK

41U 21889-00:

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SESWNW	NESESE	26	19N	6W	LEWIS AND CLARK

41U 34936-00:

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			SESESE	16	17N	4W	LEWIS AND CLARK
R			SWSWNE	16	17N	4W	LEWIS AND CLARK

41U 215249-00:

Priority Date:

JUNE 30, 1957

Enforceable Priority Date: JUNE 30, 1973

- TLMD confirmed this is a use right and explained the overlapping place of use issue remark is a non-issue.

6. A deadline was set for TLMD to confirm that the above-shown changes reflect its intentions and for the parties to resolve the Notice of Intent to Appear concerns.

7. On June 14, 2023, TLMD filed a Motion to Amend claim 41U 215249-00. (Doc.¹4.00). The Motion to Amend explained:

TLMD shares the POD with the Dearborn Ranch claim 41U 96828-00 on the Parent ditch. TLMD was informed by the Dearborn Ranch attorney that the correct location of the POD is in the SWNENW of section 17 rather than the NWNENW. They would like this corrected before they withdraw their NOIA to this claim (41U 215249-00). Please use Dearborn Ranches documentation for the correct POD location on their VMA for 41U 96828-00 for evidence concerning this claims POD location.

Pursuant to the June 14, 2023 Motion to Amend, the following point of diversion modification should be made to claim 41U 215249-00:

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	SWNENW	NWNENW	17	18N	4W	LEWIS AND CLARK
Period of Diversion:	APRIL 1 TO OCTOBER 15					
Diversion Means:	HEADGATE					
Ditch Name:	PARENT DITCH					

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

8. On June 19, 2023, Dearborn filed its Response to Verified Motions to Amend Water Right Claim. (Doc.5.00). The Response explained that Dearborn “is the current lessee of the irrigated state lands in the place of use of water right claim 41U 215249-00” and Dearborn does not oppose TLMD’s Motions to Amend.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks decreed on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. Claim 41U 215249-00 is a late claim. The late claim issue remark decreed on the claim gave notice that the claim could be subordinate and therefore junior to certain permits and reservations of water. Any party asserting a superior claim to water based on a permit or reservation was required to file an objection to that late claim during the Basin 41U objection period. Because no such objections were filed, this remark can now be removed from the claim.

4. The notice-type issue remarks decreed on the claims in this Case have served their purpose. As the Objections have been addressed, no further proceedings are required.

RECOMMENDATIONS

1. The Amendments described in Findings of Fact Nos. 5 and 7 should be made to the claims in this Case.

2. The Objections to claims 41U 13594-00, 41U 21889-00, 41U 34936-00, and 41U 215249-00 should be dismissed as it has been recommended that the Amendments requested by the Objections be implemented for each of the claims in the Case.

3. The Notice of Intent to Appear filed for claim 41U 215249-00 should be dismissed. Based on Dearborn's June 19, 2023 filing, it appears its concerns have been resolved.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

Aislinn Brown
Assistant Attorney General
State of Montana
215 North Sanders
PO Box 201401
Helena, MT 59620-1401
BLCWaterCourt@mt.gov

Michael J.L. Cusick, Esq.
Cusick, Farve, Mattick & Refling, P.C.
P.O. Box 1288
Bozeman, MT 59771-1288
(406) 587-5511
(406) 587-9079 fax
office@cmrlawmt.com

Ben Eckstein
Montana Attorney General
Agency Legal Services Bureau
PO Box 201440
Helena MT 59620-1440
(406) 444-5850
blcwatercourt@mt.gov

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 13594-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
TRUST LAND MANAGEMENT DIVISION
PO BOX 201601
HELENA, MT 59620 1601

Priority Date: JULY 1, 1970

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF DEARBORN RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSESE	36	17N	4W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWSESE	36	17N	4W	LEWIS AND CLARK

Diversion to Reservoir: DIVERSION # 1

Period of Use: MAY 15 TO DECEMBER 15

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWSESE	36	17N	4W	LEWIS AND CLARK

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U

Water Right Number: 41U 21889-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
TRUST LAND MANAGEMENT DIVISION
PO BOX 201601
HELENA, MT 59620 1601

Priority Date: APRIL 15, 1935

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: HOGAN CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWNW	26	19N	6W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
SESWNW		26	19N	6W	LEWIS AND CLARK

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESWNW	26	19N	6W	LEWIS AND CLARK

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U

Water Right Number: 41U 34936-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
TRUST LAND MANAGEMENT DIVISION
PO BOX 201601
HELENA, MT 59620 1601

Priority Date: APRIL 15, 1930

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF DEARBORN RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWNE	16	17N	4W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSWNE	16	17N	4W	LEWIS AND CLARK

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESENW	16	17N	4W	LEWIS AND CLARK
2			SWSWNE	16	17N	4W	LEWIS AND CLARK

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 215249-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
TRUST LAND MANAGEMENT DIVISION
PO BOX 201601
HELENA, MT 59620 1601

Priority Date: JUNE 30, 1957

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 06/26/1996 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 5.63 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 150.00

Source Name: FLAT CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNENW	17	18N	4W	LEWIS AND CLARK

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: PARENT DITCH

Period of Use: APRIL 1 TO OCTOBER 15

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	150.00			16	18N	4W	LEWIS AND CLARK
Total:	150.00						